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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
) CC Docket No. 95-116
Telephone Number Portability) RM 8535

REPLY COMMENTS OF SPRINT LOCAL TELEPHONE COMPANIES

The Sprint Local Telephone Companies ("Sprint") respectfully submit their replies to comments to PFRs filed on September 3, 1998 in the above-captioned matter.

In its July 29, 1998 petition, Sprint requested that the Commission reconsider and clarify its *Third Report and Order in the Matter of Telephone Number Portability*, released May 12, 1998 (*Third Report*) in two respects. First, Sprint urged the Commission to revisit and reverse its decision to disallow the use of general overhead loading factors in calculating carrier-specific costs for local number portability ("LNP"). Second, Sprint requested that the Commission clarify that carrying charges incurred as a result of accelerated switch replacement are direct costs which may be recovered by the carriers.

I. Use of a General Overhead Loading Factor Must be Permitted to Ensure Competitive Neutrality

Among the petitions for reconsideration ("PFRs") filed, many were made by incumbent local exchange carriers ("ILECs") also challenging the Commission's decision to restrict the ILECs' ability to recover fully the cost of

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LNP by disallowing the inclusion of a general overhead factor in rate calculations. Correspondingly, many competitive carriers filing comments in opposition to the PFRs urge the Commission to reject the ILECs' challenge. These carriers justify their objection to the inclusion of a general overhead factor on the basis of the need for "competitive neutrality" in LNP cost recovery. AT&T (at p. 7) and Telecommunications Resellers Association (at p. 5) go further and claim that Section 251(e)(2) of the Act,¹ in requiring competitive neutrality, does not require that the Commission allow ILECs to recover their costs associated with number portability. This tortured interpretation of competitive neutrality does not comport with either the direction of the Act or the Commission's *Third Report*.

Sprint fully supports the applicability of the competitive neutrality concept to LNP cost recovery. It is because Sprint appreciates the necessity of competitive neutrality in the LNP process that Sprint objects to the Commission's rejection of the inclusion of general overhead in LNP rate development. By its very definition, competitive neutrality requires that all carriers, regardless of their status as an ILEC, CLEC or wireless provider, be treated in a like manner and have the same opportunities to compete and earn a normal return. In the *Third Report*, the Commission defined competitive neutrality as:

requiring that the cost of number portability borne by each carrier does not affect significantly any carrier's ability to compete with other carriers for customers in the marketplace....[The Commission will] apply to long

¹ Telecommunications Act of 1996, Pub. L. 104-104 ("the Act").

term number portability the two-part test the Commission developed to determine whether carriers will bear the interim cost of number portability on a competitively neutral basis. Under this test, the way carriers bear the costs of number portability: (1) must not give one service provider an appreciable, incremental cost advantage over another service provider when competing for a specific subscriber, and (2) must not disparately affect the ability of competing service providers to earn a normal return. (at paragraphs 52 and 53).

As Sprint and other ILECs explained in their petitions, as a company continues to grow and offer new services, such as local number portability, the provider's overall common costs of operation will increase. In fact, common costs will continue to exist with the addition of LNP. SBC captured the essence of this economic principle in its comments stating that "[t]he implementation of LNP also would logically increase the amount of shared and/or common costs as the carrier's economies of scale and scope increase. Denying a carrier any recovery of such overhead costs necessarily results in its denial of full recovery, violating the principle of competitive neutrality and distorting competitive outcomes." (SBC at p. 3)

AT&T attempts to argue that general overhead costs are "pre-existing, fixed costs that already are incorporated into the ILECs' current rates" and thus are not increased with the addition of LNP to the company's portfolio of services (AT&T at p. 5). AT&T made a similar argument before the California Public

Utilities Commission in a case concerning network architecture development.²

In that case, AT&T claimed that true common costs remained fixed regardless of a firm's output. The California Commission dismissed this contention, finding that AT&T confused "volume-sensitive costs – which can be assigned to particular elements – with variable costs, which cannot necessarily be attributed in the same way." (California Order at p. 56). In arriving at this conclusion, the California Commission pointed to the testimony of Pacific Bell's expert who explained that:

In this case, AT&T...[is] attempting to take regulatory advantage of the fact that when any firm's output goes to zero (i.e., it has no subscribers), that firm will have little, if any, long run economic costs. Stated another way, if any firm's output were to double in the future, then it would likely have substantially more common costs. This simple observation notwithstanding, unless and until it [can] be conclusively demonstrated that common costs are in fact volume sensitive, as opposed to size sensitive, then it is not legitimate ... to attribute common costs to volumes of particular services. (California Order at p. 57).

The reasoning AT&T offers in the instant proceeding suffers from the same flaws as the arguments it attempted to assert in California. This Commission should follow the California Commission's lead and dismiss AT&T's claims here and revise its own initial conclusion in this regard.

Vanguard avers that the ILECs' desire to include overhead in LNP charges

² *Rulemaking on the Commission's Own Motion to Govern Open Access to Bottleneck Services and Establish a Framework for Network Architecture Development of Dominant Carrier Networks/Investigation of the Commission's Own Motion into Open Access and Network Architecture Development of Dominant Carrier Networks*, R.93-04-003/I.93-04-002, Order issued February 19, 1998 ("California Order").

equates to a failure on their part to "acknowledge that the Commission must adopt a limited principle as to what factors may be considered in calculating the relevant direct and recoverable costs of LNP." (Vanguard at p. 3). Vanguard cautions that, without some limitations, "carriers will have the opportunity and incentive to include unrelated costs in the calculation of carrier-specific costs for LNP." (*Id.*). Vanguard misses the point. First, it fails to address the essence of Sprint's argument – that is, LNP is no different from any other service and, therefore, should bear its share of common costs. This is particularly true with respect to the LNP query charge. As a competitive service, the query charge is not a part of the ILEC "bottleneck" about which the Commission has expressed concern. Rather it is a competitive service with functional substitutes and as such should shoulder a portion of the firm's common costs. Second, as Sprint noted in its petition, carriers will, and should, continue to bear the burden of proof that the overhead factor chosen is reasonable. Consequently, between the Commission's regulatory oversight, and the marketplace, any opportunity or incentive a carrier may have to include unrelated costs in its overhead factor would be adequately addressed.

In the end, MCI summarized the issue most succinctly when it explained that "so long as incumbent LECs recover their carrier-specific costs from end users and carriers purchasing query services, then the inclusion of overhead charges should not impact the competitive neutrality of LNP cost recovery.

Therefore, if the Commission reaffirms its determination that allowing incumbent LECs to pass through their LNP costs to carriers through interstate access charges would not be competitively neutral, and makes clear that ILECs may not recover overhead charges through access charges or interconnection costs, MCI does not oppose inclusion of overhead charges in incumbent LEC carrier-specific LNP costs" (MCI at pp. 9-10).

The Commission must reverse its decision and permit carriers to utilize a general overhead loading factor when calculating LNP price levels.

II. Carrying Charges Associated with Accelerated Switch Replacement Should be Considered a Direct Cost of LNP.

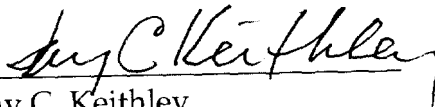
Sprint has requested the Commission to clarify that carrying charges incurred as a result of accelerated switch replacement are direct costs which may be recovered by the carriers. In response to Sprint's request, AT&T provides a somewhat contradictory rejoinder, suggesting that carrying charges should not automatically be deemed direct costs of LNP, but rather that the involved ILEC must demonstrate that any such switch replacement represents an expense directly caused by LNP (AT&T at p. 8). At the same time, AT&T appears to be offering "the sleeves from its vest" by saying that under this test, an ILEC would be entitled only to the carrying charges associated with those specific portions of the new switch that are directly related to LNP.

While muddled in its logic, Sprint believes that AT&T is in agreement with Sprint's position on the recovery of the carrying charges. Clearly, any costs

recovered in LNP rates must be costs that are incurred directly as a result of LNP. In the case of accelerated switch replacement, Sprint agrees that the cost of the switch itself is not an LNP direct cost. However, there is no doubt that there will be situations that, but for the mandate to accelerate switch deployment in order to support LNP, the carrier involved would not experience the carrying charges associated with switch replacement at the current time. In such a situation, carrying charges related to the switch replacement are the *direct* result of LNP deployment and, as such, are fully recoverable costs.

The Commission should, therefore, clarify that advancement of investment costs associated with accelerated switch replacement are carrier-specific costs directly related to providing LNP and, as such, are recoverable items.

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September 16, 1998

CERTIFICATE OF SERVICE

I, Melinda L. Mills, hereby certify that I have on this 16th day of September 1998, served via U.S. First Class Mail, postage prepaid, or Hand Delivery, a copy of the foregoing "Reply Comments of Sprint Local Telephone Companies" In the Matter of Telephone Number Portability, CC Docket No. 95-116, RM 8535, filed this date with the Secretary, Federal Communications Commission, to the persons on the attached service list.



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